February 22, 2011
Testimony Re: SB188 and SB189

Members of the Senate Judiciary Committee,

For 17 years I have been a juvenile advocate for children with learning disabilities. If there's one thing I've learned from that, it's that life is not always "black and white." In as much as we want to neatly categorize people in life – our forced attempt to do so is rarely right. This can't be truer than when it comes to juveniles, and in particular, juveniles who commit a criminal offense. This is why our juvenile justice system is a rehabilitative system. For this reason, I do not support the statutory inclusion of juveniles on the sex offender registry. I advocate that this be done using a judicial process that uses risk assessments.

Given that Michigan legislators seek to comply with the Adam Walsh Act, I have 3 major concerns with SB 188 and 189:

SB188 needs to use the Adam Walsh Act Guideline definition for Juvenile offenders required to register – NOT the adult definition of Tier 3 offender for juveniles 14 – 17 years age as the bill is currently written. The AWA Guidelines, as detailed on the USDOJ Fact Sheet on Juveniles Required to Register Under SORNA (see attached), and the email from the SMART Office (attached), clearly indicates a distinct definition for juvenile offenders from that of an adult. This is the definition that should be used to define 14 – 17 year old Juvenile Tier 3 offenders. This is the definition required to achieve compliance with SORNA (the USDOJ actually uses the term "substantial implementation, not "compliance"). Ironically, as currently written, SB188 requires a less culpable 14 year old that has sexual contact with a juvenile < 13 to be a Tier 3 offender, while a 16 year old that has contact with a 13 years old does not have to register. The 14 year old, like the 16 year old, does not fit the AWA Guideline definition of a sex offender, and should not be labeled a Tier 3 offender. Existing registrants should be allowed to petition the court for discontinuation of registration. A mechanism already exists in SB188 and 189 that allows the court to place a new offender on the registry, or to retain an existing registrant on it, if they are a continuing threat to the public. If Michigan chooses to statutorily include a juvenile that exceeds the AWA Guideline for a juvenile offender, this individual should be labeled as Tier 1 offenders (which MI is allowed to do).

Existing registrant < 14 years of age at offense - Should be administratively removed where dates on record at the MSP (i.e. charge date and birth date), clearly indicate a juvenile was < 14 years of age at the time of the offense. Court time and expense to make this determination is wasteful. Where it can not be determined from MSP record dates whether the registrant was < 14 at offense, these registrants would then need to petition the court for that determination. Ohio administratively removed some juveniles from their registry when they implemented the Adam Walsh Act.

Retroactivity - The language needs to reflect that if an individual has a subsequent felony, that the future requirement to be registered does not pertain to juveniles that were < 14 at offense, or where the juvenile was 14 – 17 and the listed offense is a Tier1 or Tier 2 offense, or where the court discontinued registration . MI is only required to register those with a subsequent felony if the offense is one that required registration per SORNA. Personally, this requirement is absurd for anyone who has not sexually reoffended.

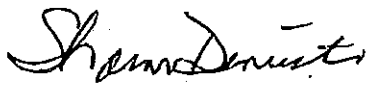
I urge you to at minimum, make the changes found on the sheet of Recommended Changes to SB188 and SB189 attached.

I applaud some of the changes you have made in SB188 and 189 regarding juveniles, that moves in the direction that supports what numerous research studies have shown us and experts on sexual behavior have told us – and better supports the rehabilitative purpose of our juvenile justice system.

Lastly, I want to leave you with a few compelling facts:

- Michigan has over 3,650 juvenile offender registrants[1] - approximately 17% of all juvenile registrants nationwide[2] - yet Michigan has only 3% of the nation's population.[3]
- In 2008, the Council of State Governments passed a "Resolution in Opposition of the Sex Offender Registration and Notification Act As It Applies to Juvenile Offenders," (see resolution attached).
- Maryland passed legislation in October 2009 that excludes juveniles from their registry. Only when the individual turns 18 can a request be filed by the prosecutor to have a juvenile register, and only if the court determines that they are "at significant risk of committing an offense for which registration would be required" do they have to register. Doing so despite the Adam Walsh Act. Virginia passed legislation in 2005 that is very similar. Oregon passed legislation allowing all juvenile registrants the ability to be removed in 2008. Illinois passed similar legislation. There are others that have made changes despite SORNA as well.

Thank you for your time and consideration. It's time to fix this injustice toward juveniles.



1 Michigan State Police, Feb. 2010.

2 There are estimated to be 21,500 juveniles on registries nationwide. 3% of all registrations are estimated to be juveniles (Letourneau, 2010). Registry Count = 716,750; (Registered Sex Offenders in the United States, National Center for Missing and Exploited Children. 14 June 2010). http://www.missingkids.com/en_US/documents/sex-offender-map.pdf.

3 U.S. Census Bureau, July 2009, (Michigan Population – 9,969,727, US Population – 307,006,550)

U.S. Department of Justice
Office of Justice Programs

Juvenile Offenders Required to Register Under SORNA: A Fact Sheet

Section 111 of the Adam Walsh Act, codified at 42 U.S.C. §16911, governs the applicability of SORNA's sex offender registration requirements to juvenile offenders who are adjudicated delinquent of a sex offense. 42 U.S.C. §16911(8) provides that:

> The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code [18 USCS § 2241]), or was an attempt or conspiracy to commit such an offense.

Generally speaking, 18 USC §2241 prohibits:

(a) knowingly caus[ing] another person to engage in a sexual act--
(1) by using force against that other person; or
(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; [or
(b) engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim; or
(c) engaging in a sexual act with a person under the age of 12]

Under the Final Guidelines, the definition of "sexual act" that jurisdictions are minimally required to use to determine whether a criminal offense is "comparable to" 18 U.S.C. §2241 is as follows:

- engaging in a sexual act with another by force or the threat of serious violence (*see* 18 U.S.C. 2241(a)); or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (*see* 18 U.S.C. 2241(b)).

→ "Sexual act" for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

To meet the minimum standards of substantial compliance under the Final Guidelines, jurisdictions are not required to register juveniles adjudicated delinquent of a SORNA sex offense simply because it involves a sexual act with a person under 12 (18 USC § 2241(c)), without more. (one of the factors above)

By definition, an adjudication of delinquency for an offense 'comparable to' 18 U.S.C. §2241 will result in a tier III registration classification. 42 U.S.C. §16911(4). The Final Guidelines make clear the criteria to be used in determining whether an offense for which a juvenile has been adjudicated delinquent qualifies for a tier III registration:

> [J]urisdictions generally may premise the determination on the elements of the offense, and are not required to look to underlying conduct that is not reflected in the offense of conviction.

Subj: **RE: Urgent SORNA Juvenile Question**
Date: 2/8/2011 9:26:25 AM Eastern Standard Time
From: Scott.Matson@usdoj.gov
To: [redacted]

Hi Sharon,
My responses are below each question...

It is my understanding that per the SORNA Final Guidelines - Juveniles Offenders Required to Register Under SORNA, a state is NOT required to register the following juvenile offenders in order to achieve substantial compliance. Correct? A juvenile offender 14 - 17 years of age at the time of the offense that engages in:

CSC 2

1. "Sexual contact" (intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts), even where a victim was under 13 years of age. This type of contact is not defined as aggrevated sexual abuse per SORNA Guidelines, correct?

and CSC 4

That is correct. A juvenile adjudicated delinquent for this type of offense would not be required to register under SORNA.

CSC 1 and CSC3

2. In the absences of forces or treat of serious violence, by rendering unconscious or involuntarily drugging the victim, "Sexual penetration" (sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required), even where the person is under 13 years of age, or the offender is a member of the same household as the victim, or related to the victim by blood or affinity to the fourth degree. This type of contact does not include the aggrevating circumstances defined as aggrevated sexual abuse per SORNA Guidelines, correct?

Yes, that is correct. The strict interpretation of SORNA is as follows: it suffices for substantial implementation if a jurisdiction applies SORNA's requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence; or
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

"Sexual act" for this purpose should be understood to include any degree of genital or anal penetration, and any oral-genital or oral-anal contact.

I will try to give you a call later today about the international travel issue.

Scott

Scott G. Matson
Senior Policy Advisor
U.S. Department of Justice
Office of Justice Programs, SMART Office
810 7th Street, NW
Washington, DC 20531
(202) 305-4560

S. Denniston, 02-21-2011

Recommended Changes to SB188 and SB189:

1. **The definition of Tier III Offenses used for juveniles should NOT be the list required for adults in the Adam Wash Act.** Section 3(V) needs to clearly differentiate a distinct list of offenses required per the Adam Walsh Act Guidelines for juvenile Tier III offenders (See the USDOJ Fact Sheet on Juveniles Required to Register Under SORNA and email from the SMART Office attached; requires only offenses involving penetration by force, threat of serious violence, rendering unconscious or drugging).
   a. Ohio and Florida do not use the adult definition of Tier 3 offenses for juveniles. Ohio only requires juveniles with adult offenses to register when ordered by the court, or after a subsequent offense. Ohio has achieved compliance (the correct term is Substantial Implementation).
   b. Keep in mind in that where a juvenile may be a continuing threat to the public, Section 2 (B)(iii)(B)(I) and Section 8c(16) permit the court to require a new and existing juvenile offender to register for any of the adult offenses.
   c. Subsection (V)(ix) should be added to Section 3 as follows:
      (ix) Subsection (V) does not apply to an offender having a juvenile disposition or adjudication for a violation of Michigan penal code, 1931 PA 328, MCL 750.520b(1)(a), 750.520b(1)(b)(i), 750.520b(1)(b)(ii), 750.520c, 750.520d(1)(a), 750.520g(2), or 750.338.

2. **When the Charging Date and Birthdate on record with the MSP indicate an existing juvenile registrant was < 14 yrs of age at offense, the individual should be administratively removed by the MSP upon request by the registrant, saving expense to Michigan.** If it can not be determined the juvenile registrant was < 14 yrs of age at offense, then these juvenile registrants would be required to petition the court for that determination.

3. **Technical problem with Section 8c (3). It needs to indicate Section 8c(15)(D) can petition under subsection (15).** These individuals are not classified as a Tier 1, 2, or 3 offenders, and are therefore allowed to petition, however, the language has technical issues. This can easily be corrected by writing subsection (3) as follows:
   Section 8c(3) –
   "An individual who meets the requirements of subsection (15) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act."

4. **Section 3 (1)(E), Section 4(5), Section 4(6), Section 4(7)(C) and Section 5 (14) – The language needs to reflect that juveniles that were < 14 at offense or where the court discontinued registration for any registrant do not have to register if they have a subsequent felony.** MI is only required to register those with a subsequent felony if the offense is one that requires registration per SORNA. **"Listed offense" needs to be qualified because there are other factors besides listed offense that determine whether registration is required.** This is why something like "for which registration is required under this act" should be added. For example, a juvenile may have had a listed offense for which a juvenile is not required to register (ie. a Tier 1 or 2 offense, or the juvenile was < 14, or court determined was consensual), but these would not fall under this registration requirement if they have a felony after July 1, 2011.)
   For example, the language should read something like:
   Section 3(1)(E) - "Excluding an individual with a juvenile disposition or adjudication for an offense that occurred when the individual was less than 14 years of age, and an individual whose registration was discontinued by the court, AN INDIVIDUAL WHO WAS PREVIOUSLY CONVICTED OF A LISTED OFFENSE FOR WHICH registration is required under this act, that HE OR SHE WAS NOT REQUIRED TO REGISTER UNDER THIS ACT, BUT WHO IS CONVICTED OF ANY OTHER FELONY ON OR AFTER JULY 1, 2011.

5. **In Section 8c(17) and Section 3A(I) allow the courts to designate the Tier classification** when a court orders an individual to register.

S. Denniston, 02-21-2011

Technical Corrections Needed in SB188 and 189:

1. **Section 2 (B)(iii)(B)(I) and Section 2 (B)(iv)(B)(I)** is missing information. Should read "The order of disposition is for an offense that would classify the individual, other than an individual described in subparagraph (A)(I) **and (A)(II).**

2. **Section 3 (1)(c)** – Where's section 2(J)(xiv)?

3. **Section 8(4)** – Should say "the public internet website described in subsection (2)" not "the database described in subsection (2)".

4. **Section 8 (1) (E)** needs to be consistent with sections Section 5 (1)(E) Section 7 (1)(E). – Should say "in which the individual is away, or is expected to be away, from his or her residence for more than 7 days."

5. **Section 7 (1)(Q)** – states that if the palm or fingerprints are not already on file a registrant shall **have them taken no later than September 12, 2010**... and this date has already passed.

THE COUNCIL OF STATE GOVERNMENTS
RESOLUTION IN OPPOSITION OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT AS IT APPLIES TO JUVENILE OFFENDERS

WHEREAS, the Sex Offender Registration and Notification Act (SORNA) requires that juvenile sex offenders age 14 years and older be included on both state and national public sex offender registries;

WHEREAS, under SORNA, sex offender registries may publish the addresses of a juvenile offender's home, school or work, a photograph and description of the juvenile, and license plate number;

WHEREAS, these provisions of SORNA contradicts the rehabilitative intent and confidentiality that has been inherent in the juvenile justice system;

WHEREAS, SORNA ignores important developmental differences between juveniles and adults, namely that juvenile sex offenders are at a much lower risk to reoffend than adult sex offenders;

WHEREAS, SORNA further ignores evidence that a youth's brain is still developing until their early twenties, meaning juveniles are not fixed in their sexual offending behavior and may respond well to treatment;

WHEREAS, juveniles have fewer numbers of victims than adult offenders, and on average, engage in less serious and less aggressive behaviors;

WHEREAS, juvenile sex offenders do not pose the same public safety threat as adult sex offenders;

BE IT THEREFORE RESOLVED, that The Council of State Governments strongly opposes SORNA's application to juvenile sex offenders and urges Congress to revise the law to more accurately address the needs of juvenile offenders.

Adopted this 6th day of December, 2008 at the CSG 75th Anniversary Celebration and Annual Meeting in Omaha, Nebraska.

Governor M. Jodi Rell
2008 CSG President

Rep. Kim Koppelman
2008 CSG Chair